Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Implementation of the Local Competition Provisions of the Telecommunications Act	)	CC Docket No. 96-98
	)	Phase II

CONSOLIDATED OPPOSITION AND COMMENTS

BellSouth Corporation, on behalf of its affiliated companies ("BellSouth"), hereby submits this consolidated opposition to certain petitions for reconsideration and clarification of the *Second Report and Order* adopted by the Commission in the above captioned docket.[1]

I. THE COMMISSION SHOULD AFFIRM ITS DECISION NOT TO REQUIRE IMPLEMENTATION OF LONG-TERM DATABASE NUMBER PORTABILITY AS A PRECONDITION TO IMPLEMENTATION OF AN ALL-SERVICES OVERLAY NUMBERING PLAN AREA CODE RELIEF PLAN.

For the reasons set forth in the Consolidated Response filed by the United States Telephone Association, which BellSouth supports, the Commission should deny the petitions of AT&T, Cox Communications, Teleport Communications Group and MFS to the extent they seek to require implementation of long-term database ("permanent") number portability prior to implementation of an all-services overlay in relief of exhausting numbering plan area ("NPA")

---

[1] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Second Report and Order and Memorandum Opinion and Order, FCC 96-333 (August 8, 1996) (hereinafter *Second Order*). BellSouth filed a petition for reconsideration of the *Second Order* on October 7, 1996 (the "BellSouth Petition").

codes. These petitions add nothing to the record which suggest that the Commission should, in any way, reconsider its decision not to require the imposition of permanent number portability.

II. THE COMMISSION SHOULD DENY PETITIONS SEEKING TO ASSIGN ALL REMAINING CENTRAL OFFICE CODES TO COMPETITIVE LOCAL EXCHANGE CARRIERS PRIOR TO IMPLEMENTATION OF AN OVERLAY.

AT&T urges the Commission to reconsider its decision requiring that local numbering plan administrators make available at least one central office ("NXX") code to each authorized carrier within an NPA as a precondition to implementation of an all-services overlay. AT&T would have the Commission "require that when an NPA overlay is implemented, all remaining NXXs must be equitably distributed among competitive local exchange carriers ("CLECs"), according to their requirements."[2] As BellSouth demonstrated in its Petition, the Commission's new rule could lead to uncertainty as to whether all conditions for implementation of an overlay have been met until 90 days prior to implementation.[3]

None of the petitioners has offered any evidence that current NXX code assignment guidelines, adopted, approved and continuously revised through the consensus process in industry fora, have failed to assure that new entrants will be able to receive NXXs from an exhausting NPA. Indeed, nothing in the current guidelines prohibit local North American Numbering Plan ("NANP") NXX code administrators from developing a relief plan, in conjunction with all affected carriers, that provides for such relief as local conditions may warrant. The Commission should not unnecessarily tie the hands of local NANP administrators by imposing an arbitrary allocation scheme that may do more to exacerbate exhaust than to relieve it.

---

[2] AT&T Petition at 7. See also MFS Petition at 9; Teleport Petition at 4-7.

[3] BellSouth Petition at 8.

In its Petition for Reconsideration, USTA demonstrated why the current 90 day requirement should be removed altogether.[4] Under USTA's proposal, so long as NXXs are available in an existing NPA, numbering administrators, with state oversight, would assign at least one NXX in the existing NPA to each authorized carrier prior to implementation of an all-services overlay on a first-come, first-served basis. The 90 day requirement, as USTA demonstrates, is actually a "forced warehousing" plan which would only be exacerbated if the proposals of AT&T, MFS and Teleport were adopted. The Commission should, therefore, grant USTA's Petition for Reconsideration. In the alternative, the Commission should clarify that NXXs are only to be assigned to authorized facilities-based carriers who do not already have working NXXs prior to overlay implementation.[5]

III. THE COMMISSION SHOULD REJECT AT&T'S REQUEST THAT THE COMMISSION REQUIRE AN INCUMBENT LOCAL EXCHANGE CARRIER TO IMPUTE CODE OPENING CHARGES RETROACTIVELY TO ITSELF FOR EVERY NXX CODE IN ITS POSSESSION

The Commission has determined that charging different "code opening" fees for different providers or categories of providers of any telecommunications service violates several provisions of the Communications Act of 1934, as amended by the Telecommunications Act of 1996.[6] Any incumbent local exchange carrier ("ILEC") charging competing carriers fees for assignment of NXX codes may only do so if the ILEC charges one uniform fee for all carriers, including itself or its affiliates.[7] BellSouth has informed the Commission that it does not intend to charge such fees,[8]

---

[4] USTA Petition at 9-11; see also USTA Consolidated Opposition at 6-8.

[5] BellSouth Petition at 8, SBC Communications Petition at 28.

[6] *Second Order* at ¶ 332.

[7] *Id.*

but opposes AT&T's request for retroactive imputation of each and every NXX code ever assigned to a LEC when the LEC was also the local NANP administrator. There is simply no authority for such unwarranted retroactive regulation,[9] although AT&T, as a CLEC, stands to benefit greatly from the handicap it would impose on ILECs who were required by law to serve as the interim numbering plan administrator between AT&T itself, which developed and administered the plan for 36 years, and the neutral third party administrator mandated by the 1996 Act.[10] Because Congress did not instruct the Commission to make any rule promulgated in connection with the 1996 Act apply retroactively, the Commission should deny AT&T's request.[11]

IV. THE COMMISSION SHOULD ALLOCATE NUMBER ADMINISTRATION COSTS ON THE BASIS OF ELEMENTAL ACCESS LINES.

In the *Second Order* the Commission determined that "because of ambiguity between the language of the 1996 Act and the *NANP Order*" further agency action was necessary to conform

---

[8] BellSouth Petition at 9. BellSouth understands AT&T's proposal to take effect only "when an ILEC charges a fee to its competitors for opening central office codes." AT&T Petition at 11.

[9] A statute or regulation has retroactive effect where "it would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed." *Landgraf v. USI Film Prods.*, 511 U.S. 244, 114 S. Ct. 1483, 1505 (1994). AT&T's proposal would clearly result in a rule that would "increase a party's liability for past conduct" and "impose new duties with respect to transactions already completed."

[10] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) ("1996 Act") 47 U.S.C. § 251 (e)(1).

[11] A statutory grant of legislative rulemaking authority will not, as a general matter, be understood to encompass the power to promulgate retroactive rules unless that power is conveyed by Congress in express terms. *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988). There is no express power conveyed by Congress to the Commission to promulgate retroactive rules pursuant to the 1996 Act. Hence, the rule that AT&T proposes would be impermissibly retroactive, in clear violation of the rule in *Bowen*. 488 U.S. at 219.

the cost recovery requirements specified in the *NANP Order*[12] to the 1996 Act. BellSouth agrees that such action is necessary. In its Reply Comments filed in the Commission's pending number portability cost allocation and recovery docket, BellSouth demonstrated that an allocation method based on retail revenues are more consistent with competitive neutrality than one based on gross revenues.[13] Because the statutory mandate for competitively neutral cost allocation is the same for the costs of establishing number portability as it is for the costs of establishing number administration, and because the *NANP Order* was released prior to enactment of the 1996 Act, BellSouth agrees with the Commission that it should take further action to conform the cost recovery requirements relating to number administration and number portability with the 1996 Act.

In their Petitions for Reconsideration, NYNEX, SBC Communications Inc., and USTA also demonstrate that a cost allocation based on gross revenues less payments to other carriers is not competitively neutral.[14] SBC suggests that number administration costs be allocated to all telecommunications carrier on the basis of elemental access lines ("EAL"), while NYNEX and USTA urge the Commission to adopt an allocation scheme based on retail revenues.[15] BellSouth supports SBC's suggestion. Under this approach, access lines would be arbitrarily, but logically counted by "element" indicative of their use in three different types of services: local exchange service (including wireline and wireless), presubscribed intraLATA toll service and presubscribed

---

[12] In the Matter of Administration of the North American Number Plan, *Report and Order*, 11 FCC Rcd 2588 (July 13, 1995).

[13] In the Matter of Telephone Number Portability, CC Docket No. 95-116, *Further Notice of Proposed Rulemaking*, BellSouth Reply Comments at 7-9 (Sept. 16, 1996).

[14] NYNEX Petition at 2-5, SBC Petition at 19-20, USTA Petition at 5-6.

[15] *Id.*

interLATA toll service. Such an allocator avoids the disproportionate distribution of costs on new entrants, interexchange carriers or ILECs. BellSouth recommends that the Commission adopt the EAL approach as the most satisfactory way of achieving Congress's mandate that the costs of establishing both number portability and number administration be borne by all carriers on a competitively neutral basis. In the alternative, the Commission should at least reconsider its gross revenue allocation determination and adopt the "retail revenues" proposals set forth by NYNEX and USTA.

V. THE COMMISSION SHOULD DENY OMNIPOINT'S REQUEST TO REMOVE STATE OVERSIGHT OVER AREA CODE RELIEF IMPLEMENTATION AND TO OPEN NATIONWIDE NON-GEOGRAPHIC AREA CODES.

Omnipoint's Petition for Reconsideration is procedurally improper and should be denied. Omnipoint's Petition is more in the nature of a petition for rulemaking insofar as it seeks to fundamentally alter the underpinnings of the North American Numbering Plan's NPA code system and assignment guidelines. At least one variant of Omnipoint's proposal has been raised before the Industry Numbering Committee ("INC"), which has given the concept due consideration.[16] To the extent Omnipoint's new proposal address the objections raised by a consensus of the industry at previous INC meetings, it should be reintroduced at the INC. This proceeding is neither the time, nor the place, for the Commission to consider Omnipoint's vision of a new, non-geographic NPA framework.

[16] Omnipoint raised a similar issue at INC-22 in January, 1996. Omnipoint made two contributions at subsequent INC meetings to support their position. Consensus was reached across industry segments at INC-24 that it would be inappropriate to make a non-geographic, major trading area based NPA code assignment as requested by Omnipoint.

VI. THE *SECOND ORDER* DOES NOT REQUIRE ILECs TO INDIVIDUALLY CONTACT EXISTING CUSTOMERS IN ORDER TO ASCERTAIN THEIR CHOICE OF PRIMARY INTRALATA TOLL CARRIERS; STATES SHOULD DETERMINE WHETHER LECS MAY DEFAULT NEW CUSTOMERS TO THEMSELVES AFTER APPROPRIATE CUSTOMER NOTIFICATION EFFORTS HAVE BEEN MADE.

BellSouth reads the prohibition against automatic assignment of toll customers contained in paragraph 41 of the *Second Order* as inherently applying to new customers. Paragraph 81 of the *Second Order* makes clear that automatic assignment of *new* customers who do not affirmatively choose a toll provider is prohibited. GTE, SBC and USTA ("petitioners") have identified an ambiguity within the corresponding rule adopted by the *Second Order* which could be read to imply that existing customers are to be individually queried with respect to their choice of intraLATA toll carriers, notwithstanding the "deluge of marketing materials that will most likely accompany the implementation of intraLATA dialing parity."[17] BellSouth believes that the petitioners' analysis of the effect of such an implication constitutes a conclusive demonstration that nothing in the *Second Order* or the rules promulgated pursuant thereto was intended to apply to a LEC's existing intraLATA toll customers. Hence, there is nothing to clarify and the Commission need only confirm that it never intended the inference drawn by petitions or the hardship on consumers that would result therefrom.

Finally, the Commission found that the States are best able to evaluate implementation plans in a way that will avoid service disruption for subscribers and promote competition in the intrastate toll market.[18] In light of this finding, BellSouth agrees with NYNEX that there is no reason why the States should be precluded from making, in the first instance, the determination as

---

[17] GTE Petition at 4-7; SBC Petition at 2-6, USTA Petition at 7-8.

[18] *Second Order* at ¶ 39.

to whether a LEC may default new customers to itself after customers have been notified of the existence of alternative carrier choices.[19] Based on local circumstances, a State might reasonably conclude that it is not in the interest of the dialing public to mandate access codes for intraLATA toll dialing for new customers, especially after appropriate State-approved notification and education requirements have been met, and the Commission should defer to that conclusion. Accordingly, the Commission should grant NYNEX's request that the Commission reconsider its decision that LECs may not default new customers to themselves, and leave the default decision to State commissions.

VII. THE COMMISSION WAS WITHOUT AUTHORITY TO APPLY THE 1996 ACT'S NUMBER PORTABILITY AND NUMBER ADMINISTRATION COST REQUIREMENTS TO DIALING PARITY.

The Commission acknowledged in its *Number Portability Order* that its cost recovery principles for Transitional Measures of number portability constituted a rare exception from cost-causative cost recovery principles.[20] BellSouth has demonstrated that these principles were promulgated without any basis in law, and are confiscatory as applied to ILECs.[21] Further, they are inappropriate for long-term database number portability.[22] Besides being the wrong thing to

---

[19] NYNEX Petition at 6.

[20] In the Matter of Telephone Number Portability, FCC 96-286, CC Docket No. 95-116, *First Report and Order* 11 FCC Rcd 8552, 8419-20 ¶ 131 (July 2, 1996).

[21] In the Matter of Telephone Number Portability, FCC 96-286, CC Docket No. 96-128, *First Report and Order*, BellSouth Petition for Reconsideration or Clarification, pp. 1-10 (Aug. 26, 1996); *see also U S West Communications, Inc. v. United States of America*, No. 96-731 (U.S. Ct. Cl.)(filed Nov. 18, 1996) (alleging cost recovery principles established for interim number portability constitute unconstitutional taking of property).

[22] In the Matter of Telephone Number Portability, CC Docket No. 95-116, *Further Notice of Proposed Rulemaking*, BellSouth Comments at 2-4 (Aug. 16, 1996), BellSouth Reply Comments at 2-4 (Sept. 16, 1996).

do, it was completely arbitrary and capricious for the Commission to graft these principles unto intraLATA toll dialing parity, usurping State jurisdiction without notice and without any statutory authority. BellSouth agrees with SBC's analysis that the Communications Act provides no basis for the Commission's extension of its principles for interim number portability cost recovery to dialing parity cost recovery.[23]

VIII. THE COMMISSION SHOULD CONFIRM THAT THE NETWORK DISCLOSURE REQUIREMENTS WERE NOT INTENDED TO ESTABLISH SUBSTANTIALLY DIFFERENT OR BURDENSOME OBLIGATIONS.

Concerns raised in the Petitions for Reconsideration of NYNEX and SBC evidence a need for some clarification of the network disclosure obligations adopted in the *Second Order*. For example, NYNEX expresses concern that the *Second Order* may be read to require disclosure for a variety of day-to-day operational activities, such as cable throws, and asserts that the disclosure process would "bring service provisioning to its knees" if the interpretation speculated by NYNEX were correct.[24] The Commission should allay NYNEX's concerns by confirming that the disclosure obligation is not triggered by such day-to-day service provisioning activities.

The Order itself confirms that the Commission's intent was to adopt a disclosure standard that "is not burdensome but reasonable."[25] Moreover, while the rules regarding the processes for making disclosure under Section 251(c)(5) (including the timing and means of making public disclosure) have been modified materially from prior rules, the substantive requirements have remained "consistent . . . with the requirements of the 'all carrier rule' and the scope of the

---

[23] SBC Petition at 8.

[24] NYNEX Petition at 9-10.

[25] *Second Order* at ¶ 173.

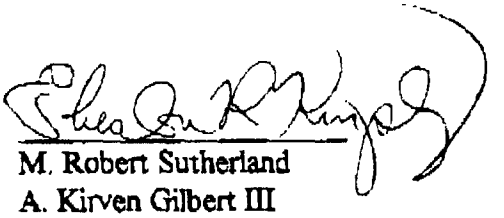
Computer III disclosure requirement."[26] Accordingly, the Commission should respond to NYNEX's and SBC's Petitions by clarifying that the new disclosure requirement is not to be read to impose burdens on incumbents LECs materially greater than those imposed under preexisting requirements.[27]

CONCLUSION

BellSouth respectfully requests the Commission to deny certain petitions for reconsideration or clarification of the *Second Order* and to grant others as discussed above.

Respectfully submitted,

BELLSOUTH CORPORATION

By: 

M. Robert Sutherland
A. Kirven Gilbert III
Theodore R. Kingsley

Its Attorneys

Suite 1700
1155 Peachtree Street, N.E.
Atlanta, Georgia 30309-3610
(404) 249-3392

DATE: November 20, 1996

---

[26] *Id.* (citations omitted).

[27] The Commission should also use this opportunity to emphasize that its articulation of the disclosure standard under Section 251(c)(5) in no way relieves other facilities based carriers of their obligations under the "all carrier rule" to release "all information relating to network design . . . insofar as such information affects . . . intercarrier interconnection" and "to disclose, reasonably in advance of implementation, information regarding any new service or change in the network." *Second Order* at n.383 (citations omitted).

CERTIFICATE OF SERVICE
(CC Docket No. 96-98)

I hereby certify that I have this 20th day of November, 1996 served the following parties to this action with a copy of the foregoing CONSOLIDATED OPPOSITION AND COMMENTS by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties on the attached service list.

Sheila Bonner

Thomas P. Hester/Kelly R. Walsh/
John T. Lenahan/Larry A. Peck/
Frank Michael Panek
AMERITECH
30 South Wacker Drive
Chicago, IL 60606

Antoinette Cook Bush
Mark C. Del Bianco
Jeffry A. Brueggeman
Skadden, Arps, Slate, Meagher & Flom
ATTORNEYS FOR AMERITECH
1440 New York Avenue, N.W.
Washington, D.C. 20005

Mark C. Rosenblum
Roy E. Hoffinger
Clifford K. Williams
James H. Bolin, Jr.
AT&T CORP.
295 North Maple Avenue
Room 324511
Basking Ridge, NJ 07920

Werner K. hartenberger
Laura H. Phillips
J. G. Harrington
DOW, LOHNES & ALBERTSON, PLLC
ATTORNEYS FOR COX COMMUNICATIONS, INC.
1200 New Hampshire Avenue, Ste. 800
Washington, D.C. 20036

Donna M. Roberts
Lisa B. Smith
Donald J. Elardo
MCI TELECOMMUNICATIONS CORPORATION
1801 Pennsylvania Avenue, N.W.
Washington, DlC. 20006

David N. Porter
Vice President, Government Affairs
MFS COMMUNICATIONS COMPANY, INC.
3000 K Street, N.W.
Suite 300
Washington, D.C. 20007

Andrew D. Lipman
Russell M. Blau
SWIDLER & BERLIN, Chartered
ATTORNEYS FOR MFS COMMUNICATIONS CO., INC.
3000 K Street, N.W., Suite 300
Washington, D.C. 20007

Maureen O. Helmer
General Counsel
NEW YORK STATE DEPARTMENT OF PUBLIC SERVICE
Three Empire State Plaza
Albany, NY 12223-1350

William J. Balcerski
Campbell L. Ayling
NYNEX TELEPHONE COMPANIES
1111 Westchester Avenue
White Plains, NY 10604

Mark J. Tauber
Kecia Boney
Mark J. O'Connor
Piper & Marbury, L.L.P.
ATTORNEYS FOR OMNIPOINT COMMUNICATIONS, INC.
1200 19th Street, N.W., Seventh Floor
Washington, D.C. 20036

Maureen A. Scott
Frank B. Wilmarth
John F. Povilaitis
COUNSEL FOR THE PENNSYLVANIA PUBLIC UTILITY COMMISSION
P. O.Box 3265
Harrisburg, PA 17105-3265

J. Manning Lee
Vice President, Regulatory Affairs
Teresa Marrero
Senior Regulatory Counsel
TELEPORT COMMUNICATIONS GROUP, INC.
Two Teleport Drive
Staten Island, NY 10311

Henry D. Levine
D. E. Boehling
Levine, Blaszak, Block & Boothby
COUNSEL FOR THE WASHINGTON POST COMPANY
1300 Connecticut Avenue, N.W. #500
Washington, D.C. 20036

David J. Gudino, HQE03F05
GTE SERVICE CORPORATION
P. O. Box 152092
Irving, TX 75015-2092

John L. Bartlett
Angela N. Watkins
Wiley, Rein & Fielding
GTE SERVICE CORPORATION
1776 K Street, N.W.
Washington, D.C. 20006

Mary McDermott
Linda Kent
Charles D Cosson
Keith Townsend
U. S. TELEPHONE ASSOCIATION
1401 H Street, N.W.
Suite 600
Washington, D.C. 20005

Judith St. Ledger-Roty
REED SMITH SHAW & McCLAY
ATTORNEYS FOR PAGING NETWORK, INC.
1301 K Street, N.W.
Suite 1100 East Tower
Washington, D.C. 20005

Lee A. Rau
REED SMITH SHAW & McCLAY
ATTORNEYS FOR PAGING NETWORK, INC.
8251 Greensboro Drive
Suite 1100
McLean, VA 22102

Margot Smiley Humphrey
NATIONAL RURAL TELECOM ASSOCIATION (THE RURAL TELEPHONE COALITION)
Koteen & Naftalin, LLP
1150 Connecticut Avenue, N.W.
Suite 1000
Washington, D.C. 20036

David Cosson
L. Marie Guillory
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION (THE RURAL TELEPHONE COALITION)
2626 Pennsylvania Avenue, N.W.
Washington, D.C. 20037

Lisa M. Zaina
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES (THE RURAL TELEPHONE COALITION)
21 Dupont Circle, N.W.
Suite 700
Washington, D.C. 20036

Carl W. Northrop
Christine M. Crowe
PAUL, HASTINGS, JANOFSKY & WALKER LLP
ATTORNEYS FOR AIRTOUCH PAGING POWERPAGE
1299 Pennsylvania Avenue, N.W.
Tenth Floor
Washington, D.C. 20004-2400

Mark A. Stachiw
Vice President, Senior Counsel and Secretary
AIRTOUCH PAGING
Three Forest Plaza
12221 Merit Drive
Suite 800
Dallas, TX 75251

James D. Ellis
Robert M. Lynch
David F. Brown
ATTORNEYS FOR SBC COMMUNICATIONS INC.
175 E. Houston, Room 1254
San Antonio, TX 78205

Durward D. Dupre
Mary W. Marks
J. Paul Walters, Jr.
ATTORNEYS FOR SOUTHWESTERN BELL TELEPHONE CO.
One Bell Center, Room 3520
St. Louis, Missouri 63101